IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.5493 of 2006

Date of decision: 19.10.2006

Bir Singh

..... Petitioner.

Versus

Ghisa Ram

..... Respondent.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Lokesh Singhal, Advocate &
Mr. Gaurav Jindal, Advocate
for the petitioner.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed against the order dated 23.08.2006 vide which the learned Additional District Judge, Fast Track Court, Gurgaon has directed the parties to maintain status quo regarding possession and alienation of the suit property till the decision of the suit.

The plaintiff- respondent in this revision petition had filed a suit initially relying on a sale deed dated 20.06.1995. The defendants in reply contended that the plaintiff had no surviving interest in the property as he had sold the same to one Ishwar Dayal vide sale deed dated 13.03.2002.

However the plaintiff again produced a copy of the sale deed dated 10.11.2005 vide which Ishwar Dayal has again sold the property to the wife of the plaintiff. In these circumstances, the lower appellate Court has concluded that the interest of justice requires that status quo should be maintained regarding alienation and possession of the property till the decision of the suit.

Learned counsel for the petitioner- defendant in the suit, contends that the plaintiff has only referred to sale deed for the year 1995 in the plaint and no subsequent sale deed has been referred to. He therefore submits that the trial Court had rightly declined the relief of interim injunction as the plaintiff had not approached the Court after making disclosure of full facts. He further submits that the sale deed dated 10.11.2005 is not at all referred to by the plaintiff in the plaint.

After hearing learned counsel for the petitioner, I am not inclined to interfere in the order made by the lower Appellate Court. The very fact that the defendant is aggrieved by the order of status quo indicates that the plaintiff is in possession of the suit property. In these facts and circumstances of this case, his possession should be protected during the pendency of the proceedings before the trial Court.

Learned counsel for the petitioner further contends that the lower Appellate Court has considered the matter as a Court of first instance. He states that the lower Appellate Court should not have interfered in the exercise of discretion by the Court in refusing the injunction. For this purpose, he places reliance upon a judgment of this Court in **Gram Panchayat, Village Badarpursaid, Tehsil and District**

Faridabad Through its Panch Jaipal v. Budha Ram and others PLR 2003(1) 518.

A reading of the aforesaid judgment would show that it has been observed by this Court that a duty is cast upon the Appellate Court to first consider whether there is sufficient material to reverse the prima facie finding in the case and then proceed to record its finding.

The judgment relied upon by the leaned counsel for the petitioner rather cuts his own case. I, accordingly find no merit in this revision petition and the same is therefore dismissed.

October 19, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**